

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., MOTOROLA
MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1823-JLR

DECLARATION OF KEVIN J. POST IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO MICROSOFT'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT DISMISSING
MOTOROLA'S CLAIM FOR
INJUNCTIVE RELIEF

**NOTED ON MOTION CALENDAR:
Friday, January 6, 2012**

DECLARATION OF KEVIN J. POST IN SUPPORT OF
DEFENDANTS' OPPOSITION TO MICROSOFT'S MOTION
FOR PARTIAL SUMMARY JUDGMENT DISMISSING
MOTOROLA'S CLAIM FOR INJUNCTIVE RELIEF
CASE NO. C10-1823-JLR

SUMMIT LAW GROUP PLLC
315 FIFTH AVENUE SOUTH, SUITE 1000
SEATTLE, WASHINGTON 98104-2682
Telephone: (206) 676-7000
Fax: (206) 676-7001

1 1. I am an associate at the law firm of Ropes & Gray LLP, counsel to Motorola, Inc.
2 (now Motorola Solutions, Inc.), Motorola Mobility, Inc. and General Instrument Corporation
3 (collectively "Motorola"), Defendants in this action, and am a member in good standing of the
4 bars of the State of New York and the District of Columbia.

5 2. I submit this declaration in support of Defendants' Opposition to Microsoft's
6 Motion for Partial Summary Judgment Dismissing Motorola's Claim for Injunctive Relief,
7 submitted concurrently herewith.

8 3. Attached as Exhibit 1 is a true and correct copy of Defendants' Opposition to
9 Microsoft's Motion for Partial Summary Judgment (Dkt. 86) *Microsoft Corp. v. Motorola, Inc.*,
10 No C10-1823-JLR (Sept. 23, 2011).

11 4. The licensing and negotiation information contained in Defendants' Opposition to
12 Microsoft's Motion for Partial Summary Judgment (Dkt. 86), which was filed with this court
13 under seal, is highly confidential and commercially sensitive proprietary business information
14 protected by paragraph 6 of the Protective Order. Dkt. 72 at 4. Disclosure of this information to
15 third parties and other party employees not covered by the protective order would have the
16 potential to lead to competitive harm.

17 5. Attached as Exhibit 2 is a true and correct copy of Microsoft's Amended and
18 Supplemental Complaint (Dkt. 53) *Microsoft Corp. v. Motorola, Inc.*, No C10-1823-JLR (Feb. 23,
19 2011).

20 6. Attached as Exhibit 3 is a true and correct copy of a June 14, 2011 letter sent from
21 David Heiner, Microsoft's Vice President and Deputy General Counsel, and Amy Marasco
22 Microsoft's General Manager, Standards Strategy and Policy, to the Federal Trade Commission's
23 Office of the Secretary regarding Patent Standards Workshop, Project No. P11-1204, which is
24 available at <http://www.ftc.gov/os/comments/patentstandardsworkshop/00009-60523.pdf>.

7. Attached as Exhibit 4 is a true and correct copy of selected pages from the American Bar Association, Section of Science & Technology Law, Committee on Technical Standardization, *Standard Development Patent Policy Manual* (2007).

8. Attached as Exhibit 5 is a true and correct copy of the Common Patent Policy for the ITU-T/ITU-R/ISO/IEC, Int'l. Telecommunication Union (last updated June 3, 2010), which is available at <http://www.itu.int/en/ITU-T/ipr/Pages/policy.aspx>.

9. Attached as Exhibit 6 is a true and correct copy of Motorola's Memorandum in Opposition to Microsoft's Motion to Terminate with Respect to U.S. Patent Nos. 5,319,712 and 5,357,571, ITC Inv. No. 337-TA-752 (U.S.I.T.C. Nov. 28, 2011).

10. The licensing and negotiation information contained in Motorola's Memorandum in Opposition to Microsoft's Motion to Terminate with Respect to U.S. Patent Nos. 5,319,712 and 5,357,571, which was marked "CONTAINS CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER" in ITC Inv. No 337-TA-752, is highly confidential and commercially sensitive proprietary business information protected by paragraph 6 of the Protective Order. Dkt. 72 at 4. Disclosure of this information to third parties and other party employees not covered by the protective order would have the potential to lead to competitive harm.

11. Attached as Exhibit 7 is a true and correct copy of Motorola's Memorandum in Opposition to Microsoft's Motion to Terminate the Investigation with Respect to U.S. Patent Nos. 6,980,596 and 7,162,094, ITC Inv. No 337-TA-752 (U.S.I.T.C. Nov. 28, 2011).

12. The licensing and negotiation information contained in Motorola's Memorandum in Opposition to Microsoft's Motion to Terminate the Investigation with Respect to U.S. Patent Nos. 6,980,596 and 7,162,094, which was marked "CONTAINS CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER" in ITC Inv. No 337-TA-752, is highly confidential and commercially sensitive proprietary business information protected by paragraph 6 of the Protective Order. Dkt. 72 at 4. Disclosure of this information to third parties and other

1 party employees not covered by the protective order would have the potential to lead to
2 competitive harm.

3 13. Attached as Exhibit 8 is a true and correct copy of Defendant Microsoft
4 Corporation's Answer and Counterclaims to Plaintiffs' First Amended Complaint for Patent
5 Infringement in the case *Motorola Mobility, Inc. v. Microsoft Corp.*, No. 10-699, which was filed
6 in the Western District of Wisconsin on Jan. 25, 2011.

7 14. Attached as Exhibit 9 is a true and correct copy of Microsoft Corporation's Form
8 10-K for the Fiscal Year Ended June 30, 2011.

9 15. Attached as Exhibit 10 is a true and correct copy of Motorola's XOOM Fact Sheet,
10 from the Motorola Media Center, which is available at [http://mediacenter.motorola.com/Fact-](http://mediacenter.motorola.com/Fact-Sheets/Motorola-XOOM-Fact-Sheet-3537.aspx)
11 [Sheets/Motorola-XOOM-Fact-Sheet-3537.aspx](http://mediacenter.motorola.com/Fact-Sheets/Motorola-XOOM-Fact-Sheet-3537.aspx) (last visited Dec. 28, 2011).

12 16. Attached as Exhibit 11 is a true and correct copy of an article by Nick Eaton, titled
13 "PC Sales Slow While Tablet Sales Skyrocket, Firm Says," which was published in Seattle PI on
14 Sept. 15, 2011, and is available at [http://blog.seattlepi.com/microsoft/2011/09/15/pc-sales-slow-](http://blog.seattlepi.com/microsoft/2011/09/15/pc-sales-slow-while-tablet-sales-skyrocket-firm-says/)
15 [while-tablet-sales-skyrocket-firm-says/](http://blog.seattlepi.com/microsoft/2011/09/15/pc-sales-slow-while-tablet-sales-skyrocket-firm-says/).

16 17. Attached as Exhibit 12 is a true and correct copy of an article by David Murphy,
17 titled "Tablet Sales to Take Off, PC Sales Suffer," which was published in PC Magazine on Sep.
18 11, 2011 and is available at <http://www.pcmag.com/article/print/287567>.

19 18. Attached as Exhibit 13 is a true and correct copy of an article by Mark Wilson,
20 titled, "Will Xbox 360 Replace Your Cable Box—Or Will a TV Replace Your Xbox?" which was
21 published in Popular Mechanics on Dec. 7, 2011, and is available at
22 [http://www.popularmechanics.com/technology/gadgets/home-theater/will-xbox-360-replace-your-](http://www.popularmechanics.com/technology/gadgets/home-theater/will-xbox-360-replace-your-cable-box-or-will-a-tv-replace-your-xbox-6612417)
23 [cable-box-or-will-a-tv-replace-your-xbox-6612417](http://www.popularmechanics.com/technology/gadgets/home-theater/will-xbox-360-replace-your-cable-box-or-will-a-tv-replace-your-xbox-6612417).

1 I declare under penalty of perjury of the laws of the United States and the State of
2 Washington that the foregoing is true and correct.

3 DATED this 3rd day of January, 2012.

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Kevin J. Post

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Fax: (206) 676-7001

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Arthur W. Harrigan, Jr., Esq.
Christopher T. Wion, Esq.
Shane P. Cramer, Esq.
Danielson Harrigan Leyh & Tollefson
arthurh@dhlt.com
chrisw@dhlt.com
shanec@dhlt.com

Brian R. Nester, Esq.
David T. Pritikin, Esq.
Douglas I. Lewis, Esq.
John W. McBride, Esq.
Richard A. Cederoth, Esq.
Sidley Austin LLP
bnester@sidley.com
dpritikin@sidley.com
dilewis@sidley.com
jwmcbride@sidley.com
rcederoth@sidley.com

T. Andrew Culbert, Esq.
David E. Killough, Esq.
Microsoft Corp.
andycu@microsoft.com
davkill@microsoft.com

DATED this 3rd day of January, 2012.

/s/ Deanna L. Schow
Deanna L. Schow